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14  
15 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
16

17 UNITED STATES OF AMERICA, )  
18 )

19 Plaintiff, )  
20 )

21 v. )  
22 )

23 SALT RIVER PROJECT AGRICULTURAL )  
24 IMPROVEMENT AND POWER DISTRICT )

25 Defendant. )  
26 )

Civil Action No.

27 COMPLAINT  
28

1  
2 The United States of America, by authority of the Attorney General of the United States and  
3 through the undersigned attorneys, acting at the request of the Administrator of the United States  
4 Environmental Protection Agency ("EPA"), alleges:

5  
6 NATURE OF THE ACTION

7 1. This is a civil action brought against the Salt River Project Agricultural Improvement and  
8 Power District ("SRP" or "Defendant") pursuant to Sections 113(b) and 167 of the Clean Air Act  
9 ("the Act"), 42 U.S.C. §§ 7413(b) and 7477, for injunctive relief and the assessment of civil  
10 penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act,  
11 42 U.S.C. §§ 7470-92; Title V of the Act, 42 U.S.C. § 7661-7661f; and the State Implementation  
12 Plan adopted by the State of Arizona and approved by EPA pursuant to Section 110 of the Act, 42  
13 U.S.C. § 7410.

14 2. Defendant modified, and thereafter operated, two electric generating units at the  
15 Coronado Generating Station, a coal-fired power plant in Arizona, without first obtaining  
16 appropriate permits authorizing the modification and subsequent operation of the unit, and without  
17 installing and employing the best available control technology to control emissions of nitrogen  
18 oxides ("NO<sub>x</sub>"), sulfur dioxide ("SO<sub>2</sub>"), and/or particulate matter ("PM"), as the Act requires.

19 3. As a result of Defendant's operation of the electric generating units following these  
20 unlawful modifications and the absence of appropriate controls, large amounts of NO<sub>x</sub>, SO<sub>2</sub>, and/or  
21 PM pollution each year have been, and still are being, released into the atmosphere.

22  
23 JURISDICTION AND VENUE

24 4. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b)  
25 and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and  
26 1355.

27 5. Venue is proper in this District pursuant to Sections 113(b) of the Act, 42 U.S.C.  
28 § 7413(b), and 28 U.S.C. §§ 1391(b), © and 1395(a), because the violations occurred and are

1 occurring in this District, the facilities at issue are operated by Defendant in this District, and  
2 Defendant has its headquarters and principal place of business in this District.

3  
4 NOTICES

5 6. The United States Environmental Protection Agency provided notice of the violations to  
6 Defendant and the State of Arizona, as required by Section 113(a)(1) of the Act, 42 U.S.C. §  
7 7413(a)(1).

8 7. The United States has provided actual notice of the commencement of this action to the  
9 State of Arizona as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

10 8. The 30-day period established in 42 U.S.C. § 7413, between notice to Defendant and the  
11 State of Arizona of the violations and commencement of this civil action, has elapsed.

12  
13 THE DEFENDANT

14 9. Defendant owns and is an operator of various electrical generating stations in Arizona.  
15 Defendant owns and operates the Coronado Generating Station ("CGS") located in St. Johns, Apache  
16 County, Arizona. CGS is comprised of two coal-fired electric generating units, Unit 1 and Unit 2.

17 10. Defendant is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C.  
18 § 7602(e).

19  
20 STATUTORY BACKGROUND

21 11. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as  
22 to promote the public health and welfare and the productive capacity of its population. Section  
23 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

24 The National Ambient Air Quality Standards

25 12. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to  
26 promulgate regulations establishing primary and secondary national ambient air quality standards  
27 ("NAAQS" or "ambient air quality standards") for those air pollutants ("criteria pollutants") for  
28 which air quality criteria have been issued pursuant to Section 108 of the Act, 42 U.S.C. § 7408.

1 The primary NAAQS are to be adequate to protect the public health with an adequate margin of  
2 safety, and the secondary NAAQS are to be adequate to protect the public welfare, from any known  
3 or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

4 13. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to  
5 designate those areas within its boundaries where the air quality is better or worse than the NAAQS  
6 for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An  
7 area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not  
8 meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient  
9 data is “unclassifiable.”

10 14. Defendant’s Coronado Generating Station is located in St. Johns, Apache County,  
11 Arizona. At times relevant to this complaint, Apache County has been designated as being in  
12 attainment with the NAAQS for NO<sub>x</sub>, SO<sub>2</sub>, and PM.

13 15. Pursuant to 42 U.S.C. § 7410, each State must adopt and submit to EPA for approval a  
14 State Implementation Plan (“SIP”) that provides for the attainment and maintenance of the NAAQS.  
15 The State of Arizona has adopted a SIP that has been approved by EPA.

16 The Prevention of Significant Deterioration Requirements

17 16. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the  
18 prevention of significant deterioration (“PSD”) of air quality in those areas designated as either  
19 attainment or unclassifiable for purposes of meeting the NAAQS. These requirements are designed  
20 to protect public health and welfare, to assure that economic growth will occur in a manner  
21 consistent with the preservation of existing clean air resources, and to assure that any decision to  
22 permit increased air pollution is made only after careful evaluation of all the consequences of such a  
23 decision and after public participation in the decision making process. These provisions are referred  
24 to herein as the “PSD program.”

25 17. Section 161 of the Act, 42 U.S.C. § 7471, requires that each applicable SIP contain a  
26 PSD program. The PSD program in the Arizona SIP is codified at Ariz. Admin. Code §§ R9-3-301,  
27 -304, and -306.

28 18. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the

1 construction and operation of a “major emitting facility” in an area designated as attainment unless  
2 a permit has been issued that comports with the requirements of Section 165 and the facility  
3 employs the best available control technology (“BACT”) for each pollutant subject to regulation  
4 under the Act that is emitted from the facility. Section 169(1) of the Act, 42 U.S.C.  
5 § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty  
6 million British thermal units (“BTUs”) per hour heat input and that emit or have the potential to  
7 emit one hundred tons per year or more of any pollutant to be “major emitting facilities.”

8 19. Section 169(2)© of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” as  
9 including “modification” (as defined in Section 111(a) of the Act). “Modification” is defined in  
10 Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be “any physical change in, or change in the  
11 method of operation of, a stationary source which increases the amount of any air pollutant emitted  
12 by such source or which results in the emission of any air pollutant not previously emitted.”

13 20. Applicable provisions in the PSD regulations in the Arizona SIP have at all relevant  
14 times prohibited a major stationary source from constructing a major modification in an area  
15 designated as attainment without, among other things, first obtaining a PSD permit, undergoing a  
16 (Ben, I don’t understand why you’re using “new” here.) BACT determination, and applying BACT  
17 pursuant to such determination for each relevant pollutant. The definitions contained in the PSD  
18 regulations in the Arizona SIP (and all relevant prior versions of these regulations) have at all  
19 relevant times defined “construction” to include “any physical change or change in the method of  
20 operation . . . which would result in a change in actual emissions.” These regulations have at all  
21 relevant times also defined “major modification” to include “a physical change in or change in the  
22 method of operation of a major stationary source that would result in a significant net emissions  
23 increase of any pollutant subject to regulation under [the Clean Air Act].” These regulations have at  
24 all relevant times defined “major stationary source” to include fossil fuel-fired steam electric plants  
25 of more than 250 million BTUs per hour heat input.

#### 26 Title V

27 21. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program  
28 for certain sources, including “major sources.” The purpose of Title V is to ensure that all

1 “applicable requirements” for compliance with the Act, including PSD and NSPS requirements, are  
2 collected in one place.

3 22. Arizona’s Title V operating permit program was granted approval by EPA on December  
4 5, 2001, and is codified at Ariz. Admin. Code §§ R18-2-101(61), -304, -306, -320, and -331.

5 23. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and the Arizona Title V operating  
6 permit program have at all relevant times made it unlawful for any person to operate a major source  
7 except in compliance with a permit issued by a permitting authority under Title V.

8 24. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), implementing regulations of the Act,  
9 40 C.F.R. § 70.2, and the Arizona Title V operating permit program regulations have at all relevant  
10 times required that each Title V permit include, among other things, enforceable emission  
11 limitations and such other conditions as are necessary to assure compliance with applicable  
12 requirements of the Clean Air Act and the requirements of the applicable SIP, including any  
13 applicable PSD requirement to comply with an emission rate that meets BACT and any applicable  
14 NSPS requirement.

15 25. The Arizona Title V operating permit program regulations require that a source submit a  
16 complete permit application which, among other things, identifies all applicable requirements  
17 (including any requirement to meet BACT pursuant to PSD and to comply with NSPS), certifies  
18 compliance with all applicable requirements, and contains a compliance plan for all applicable  
19 requirements for which the source is not in compliance.

#### 20 21 ENFORCEMENT PROVISIONS

22 26. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the  
23 Administrator may bring a civil action in accordance with Section 113(b) of the Act whenever, on  
24 the basis of any information available, the Administrator finds that any person has violated or is in  
25 violation of any other requirement or prohibition of, *inter alia*, (1) the Prevention of Significant  
26 Deterioration requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); (2) Title V of the Act,  
27 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or (3) the Arizona State  
28 Implementation Plan or any permit issued thereunder.

1        27. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate  
2 a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of  
3 up to \$25,000 per day for each violation occurring before January 31, 1997; \$27,500 per day for  
4 each such violation occurring on or after January 31, 1997; and \$32,500 per day for each such  
5 violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation  
6 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person  
7 whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions  
8 described in the preceding paragraph.

9        28. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an  
10 action for injunctive relief, as necessary to prevent the construction, modification or operation of a  
11 major emitting facility which does not conform to the PSD requirements in Part C of Title I of the  
12 Act.

13  
14                    DEFENDANT'S COAL-FIRED GENERATING UNITS

15        29. At all times pertinent to this civil action, Defendant was and is the owner and operator  
16 of the Coronado Generating Station ("CGS") located in St. Johns, Apache County, Arizona. CGS  
17 is comprised of two coal-fired electric generating units denominated Units 1 and 2.

18        30. At all times pertinent to this civil action, Units 1 and 2 at CGS were each a "major  
19 emitting facility" and a "major stationary source," within the meaning of the Act and the PSD  
20 regulations in the Arizona SIP for NO<sub>x</sub>, SO<sub>2</sub>, and PM. At all times pertinent to this civil action,  
21 CGS was a "major source" within the meaning of Title V of the Act and the Arizona Title V  
22 program regulations.

23  
24                    FIRST CLAIM FOR RELIEF

25                    (PSD Violations at CGS Units 1 and 2)

26        31. During the period 1998 through 2000, Defendant commenced construction of one or  
27 more major modifications, as defined in the Act and the Arizona SIP, at CGS Units 1 and 2. These  
28 modifications included one or more physical changes or changes in the method of operation at both

1 Units 1 and 2, including, but not necessarily limited to, modifications to the coal pulverizing  
2 systems and associated turbine steam path modifications at these units. These physical changes or  
3 changes in the method of operation resulted in significant net emissions increases, as defined by the  
4 relevant PSD regulations, of one or more of the following pollutants: NO<sub>x</sub>, SO<sub>2</sub>, and/or PM.

5 32. Defendant did not comply with the PSD requirements in the Arizona SIP with respect to  
6 the major modifications at CGS Units 1 and 2. Among other things, Defendant failed to obtain a  
7 PSD permit as required by the Arizona SIP prior to commencing construction and operation of the  
8 major modifications at CGS Units 1 and 2. Defendant did not undergo a BACT determination in  
9 connection with these major modifications. Defendant failed to install and operate the best  
10 available control technology for control of NO<sub>x</sub>, SO<sub>2</sub>, and/or PM, pursuant to such determination, as  
11 required by the Arizona SIP at CGS Units 1 and 2.

12 33. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. §  
13 7475(a), and the PSD provisions of the Arizona SIP at CGS Units 1 and 2. Unless restrained by an  
14 order of this Court, these and similar violations of the Act will continue.

15 34. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth  
16 above subject Defendant to injunctive relief and civil penalties of up to \$27,500 per day for each  
17 such violation occurring on or after January 31, 1997, and \$32,500 per day for each such violation  
18 occurring on or after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment  
19 Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

## 20 21 SECOND CLAIM FOR RELIEF

22 (Title V Violations at CGS Units 1 and 2 - operation with a deficient permit)

23 35. As set forth above, Defendant commenced one or more major modifications at CGS  
24 Units 1 and 2, as defined under the PSD regulations in the Arizona SIP. As a result, these  
25 modifications triggered the requirements to, *inter alia*, undergo a BACT determination, to obtain a  
26 PSD permit establishing emissions limitations that meet BACT pursuant to such a determination,  
27 and to operate in compliance with such limitations. Defendant failed to satisfy these requirements.

28 36. Subsequently, Defendant failed to submit a complete application for a Title V operating



1 permit for CGS Units 1 and 2 and identify all applicable requirements, accurately certify  
2 compliance with such requirements, and contain a compliance plan for all applicable requirements  
3 for which the source was not in compliance (including the requirement to meet BACT pursuant to a  
4 BACT determination under PSD). Defendant failed to obtain a proper or adequate Title V  
5 operating permit for CGS Units 1 and 2 that contained emission limitations for NO<sub>x</sub>, SO<sub>2</sub>, and/or  
6 PM that met BACT pursuant to a BACT determination. Defendant thereafter operated CGS Units 1  
7 and 2 without meeting such limitations and without having a valid operating permit that required  
8 compliance with such limitations or that contained a compliance plan for all applicable  
9 requirements for which the source was not in compliance. Defendant's conduct violated Sections  
10 502(a) and 504(a) of the Act, 42 U.S.C. §§ 7661a(a) and 7661c(a), and the Arizona Title V  
11 operating permit program regulations. Unless restrained by an order of this Court, these and similar  
12 violations will continue.

13 37. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth  
14 above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each  
15 violation occurring before January 31, 1997, \$27,500 per day for each such violation occurring on  
16 or after January 31, 1997, and \$32,500 per day for each such violation occurring on or after March  
17 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §  
18 2461, as amended by 31 U.S.C. § 3701.

19  
20 PRAYER FOR RELIEF

21 WHEREFORE, based upon all the allegations set forth above, the United States of America  
22 requests that this Court:

23 1. Permanently enjoin the Defendant from operating CGS Units 1 and 2, including the  
24 construction of future modifications, except in accordance with the Clean Air Act and any  
25 applicable regulatory requirements;

26 2. Order Defendant to remedy its past violations by, among other things, requiring  
27 Defendant to install and operate, as appropriate, the best available control technology at CGS Units  
28 1 and 2 for each pollutant subject to regulation under the Clean Air Act;

1           3. Order Defendant to apply for and comply with permits that are in conformity with the  
2 requirements of the PSD and Title V programs;

3           4. Order Defendant to conduct audits of its operations to determine if any additional  
4 modifications have occurred which would require it to meet the requirements of PSD and NSPS and  
5 report the results of these audits to the United States;

6           5. Order defendant to take other appropriate actions to remedy, mitigate, and offset the harm  
7 to public health and the environment caused by the violations of the Clean Air Act alleged above;

8           6. Assess a civil penalty against Defendant of up to \$27,500 per day for each violation of the  
9 Clean Air Act and applicable regulations which occurred on or after January 31, 1997, and \$32,500  
10 per day for each such violation occurring on or after March 15, 2004;

11           7. Award Plaintiff its costs of this action; and,

12           8. Grant such other relief as the Court deems just and proper.

13 Dated: August \_ , 2008

14                               Respectfully submitted,

15  
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